

ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.622(i) ) RM-11459  
Table of Allotments )  
Digital Television Broadcast Stations )  
(Madison, Wisconsin) )

To: Office of the Secretary  
Attn: Chief, Video Services Division

FILED/ACCEPTED  
AUG -6 2008  
Federal Communications Commission  
Office of the Secretary

**SUPPLEMENT TO PETITION FOR RULEMAKING**


WMSN Licensee, LLC ("WMSN"), licensee of WMSN-TV, channel 47, and WMSN-DT, channel 11, Madison, Wisconsin, by the undersigned attorneys, hereby supplements its June 20, 2008 request that the Commission initiate a rulemaking proceeding to substitute and allot DTV channel 49 for its assigned DTV channel 11 at Madison, Wisconsin at reference coordinates 43-3-21 N.L. and 89-32-6 W.L. On July 7, 2008, WMSN received a letter from the Associate Chief, Video Division ("July 7 Letter"), indicating that the WMSN proposal was mutually exclusive with a maximization application filed by TV-49, Inc., licensee of station WBME-DT, Racine Wisconsin (FCC File No. BMPCDT-20080620ACE). See Exhibit 1 for a copy of the July 7 Letter. The purpose of the instant Supplement is to inform the Commission that WMSN and TV 49, Inc. have entered into an Interference Agreement ("Agreement") attached hereto as Exhibit 2, resulting in a settlement of the interference concerns raised in the July 7 Letter because both parties have agreed

to accept the interference caused by the other.<sup>1</sup> TV 49, Inc. is concurrently amending its maximization application by also filing a copy of the Agreement with the Commission.

Consequently, WMSN respectfully requests that the Commission adopt the proposed changes to the DTV Table of Allotments.

Respectfully submitted,

WMSN Licensee, LLC

By:   
Clifford M. Harrington  
Paul A. Cicelski

Its Attorneys

PILLSBURY WINTHROP SHAW PITTMAN LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1128  
(202) 663-8000

Dated: August 5, 2008

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<sup>1</sup> According to the July 7 Letter, the proposed channel substitution facility for WMSN-DT is predicted to cause interference to .64% of the population of the WBME-DT application and the facility proposed by WBME-DT's application is predicted to cause interference to .57% of the population proposed in the WMSN-DT rulemaking petition. The instant Supplement resolving the interference issue is timely filed within 30 days of the July 7 Letter.

**EXHIBIT 1**



Federal Communications Commission  
Washington, D.C. 20554

JUL 07 2008

WMSN Licensee, LLC.  
c/o Clifford M. Harrington, Esq.  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1128

TV-49, Inc.  
c/o J. Brian DeBoice, Esq.  
Cohn and Marks LLP  
1950 N. Street, N.W.  
Suite 300  
Washington, D.C. 20036

Re: File No. BPRM-20080620AOW  
Facility ID No. 178290

File No. BMPCDT-20080620ACE  
Facility ID No. 68545

Dear Licensees:

This is with respect to the above-referenced rulemaking petition filed by WMSN Licensee, Inc. seeking to substitute DTV channel 49 for the assigned channel 11 for WMSN-DT at Madison, Wisconsin, and the maximization application filed by TV-49 Inc. for station WBME-DT, Racine, Wisconsin. Our engineering analysis shows that the proposed channel substitution facility for WMSN-DT is predicted to cause interference to .64% of the population within the noise limited contour of the facility proposed in the WBME-DT application, and that the facility proposed in WBME-DT's application is predicted to cause interference to .57 % of the population within the noise limited contour of the facility proposed in the rulemaking petition. Accordingly, the above-referenced rulemaking petition and application are mutually-exclusive.

When the Commission lifted the freeze on the filing of DTV maximization applications and petitions for digital channel substitutions,<sup>1</sup> it announced that until the end of the statutory DTV transition on February 17, 2009, mutually-exclusive applicants would be provided a 30-day period of time to resolve their mutual-exclusivity via engineering amendment or settlement, rather than the 90-day period afforded by Section 73.623(h) of the rules.<sup>2</sup> Similarly, we also shorten the settlement period for rulemaking petitions and mutually-exclusive maximization applications that were received on or before June 20, 2008. If the parties resolve their mutual-exclusivity, we will continue the rulemaking process by issuing the appropriate order and will also continue processing the maximization application. If the parties are unable to resolve their mutual-exclusivity, we will dismiss the rulemaking petition and the maximization application.

<sup>1</sup> See Commission Lifts the Freeze on the Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately, DA 08-1213 (released May 30, 2008).

<sup>2</sup> 47 C.F.R. § 73.623(h)(3).

Accordingly, the parties have 30 days from the date of this letter to resolve their mutual-exclusivity, either by entering into an interference consent agreement or proposing engineering solutions to eliminate the amount of interference. Submissions involving an application must be filed electronically on FCC Forms 301 and/or 340 using the Commission's Consolidated Database System ("CDBS") via the Internet from the Media Bureau's Web site at <http://www/fcc.gov/mb/cdb.html> or [http://fjallfoss.fcc.gov/prod/cdb/forms/prod/cdb\\_ef.htm](http://fjallfoss.fcc.gov/prod/cdb/forms/prod/cdb_ef.htm). Submissions involving a rulemaking petition must be filed with the Office of the Secretary and an electronic copy sent to [joyce.bernstein@fcc.gov](mailto:joyce.bernstein@fcc.gov) and [ron.graser@fcc.gov](mailto:ron.graser@fcc.gov).

Sincerely,



Clay C. Pendarvis  
Associate Chief, Video Division  
Media Bureau

**EXHIBIT 2**

## AGREEMENT

This agreement (the "Agreement") is made this 5th day of August, 2008 by and among WMSN Licensee, LLC, licensee of station WMSN-TV/DT, Madison, Wisconsin ("WMSN"); TV-49, Inc., licensee of station WBME-TV/DT, Racine, Wisconsin ("TV-49"); and Channel 41 and 63 Limited Partnership (an entity under common control with TV-49), licensee of station WYTU-LP, Milwaukee, Wisconsin ("Channel 41 and 63").

WHEREAS, WMSN has filed with the Federal Communications Commission ("FCC") a petition (RM-11459) seeking approval to operate WMSN-DT on Channel 49 (the "WMSN Rulemaking Petition"); and

WHEREAS, TV-49 has filed with the FCC an application (File No. BMPCDT-20080620ACE) seeking approval for maximized facilities for WBME-DT (the "WBME Maximization Application"); and

WHEREAS, WMSN and TV-49 have received the attached July 7, 2008 letter from the FCC indicating that the WMSN Rulemaking Petition and the WBME Maximization Application are mutually-exclusive, due to the fact that the former is predicted to cause 0.64% interference to the latter, and the latter is predicted to cause 0.57% interference to the former; and

WHEREAS, Channel 41 and 63 has filed with the FCC an application (File No. BDISTTL-20080801AXK) seeking approval to operate WYTU-LP on Channel 49 with facilities predicted to cause approximately 1.8% interference to the facilities proposed in the WMSN Rulemaking Petition (the "WYTU Displacement Application"); and

WHEREAS, the parties wish to obtain FCC grants of their respective petition and applications filed with the FCC by consenting to the interference which the proposals would cause to one another;

NOW, THEREFORE, in consideration of the foregoing premises and intending to be legally bound, WMSN, TV-49 and Channel 41 and 63 agree as follows:

## **SECTION 1**

WMSN agrees to accept and consents to the interference to the facilities proposed in the WMSN Rulemaking Petition from the facilities proposed in both (1) the WBME Maximization Application; and (2) the WYTU Displacement Application.

## **SECTION 2**

TV-49 agrees to accept and consents to the interference to the facilities proposed in the WBME Maximization Application from the facilities proposed in the WMSN Rulemaking Petition.

## **SECTION 3**

Channel 41 and 63 agrees that it will not, without the prior consent of WMSN, seek FCC authority to make any modification of the facilities of WYTU-LP which would cause an increase in interference to the facilities proposed in the WMSN Petition for Rulemaking over and above the 1.8% interference which is predicted to result from the facilities proposed in the WYTU Displacement Application as on file as of the date of this Agreement.

## **SECTION 4**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

## **SECTION 5**

All notices, requests, demands, waivers, consents and other communications required or permitted hereunder shall be in writing and shall be deemed to be duly given when delivered in person; sent by registered or certified mail, postage prepaid and return receipt requested; sent by



express mail or by courier, delivery charges prepaid; or sent by confirmed telecopy, to the following:

If to TV-49 or to Channel 41 and 63:

Weigel Broadcasting Co.  
26 North Halsted Street  
Chicago, IL 60661  
Att: Norman Shapiro, President  
(Phone) (312) 705-2606  
(Fax) (312) 705-2604

With a copy (which shall not constitute notice) to:

J. Brian DeBoice, Esq.  
Cohn and Marks LLP  
1920 N Street NW, Suite 300  
Washington, DC 20036  
(Phone) (202) 293-3860  
(Fax) (202) 293-4827

If to WMSN:

WMSN Licensee, LLC  
c/o Sinclair Broadcast Group, Inc.  
10706 Beaver Dam Road  
Cockeysville, MD 21030  
Attn: Del Parks,  
Vice President, Engineering Operations  
(Phone) (410) 568-1512  
(Fax) (410) 568-1536

With a copy (which shall not constitute notice) to:

WMSN Licensee, LLC  
c/o Sinclair Broadcast Group, Inc.  
10706 Beaver Dam Road  
Cockeysville, MD 21030  
Attn: Barry M. Faber, Esq.  
Executive Vice President and General Counsel  
(Phone) (410) 568-1524  
(Fax) (410) 5681537

With an additional copy (which shall not constitute notice) to:

Clifford M. Harrington, Esq.  
Paul A. Cicelski, Esq.  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037  
(Phone) (202) 663-8525  
(Fax) (202) 663-8007

Any party may change a designated contact person and address to which notices should be sent to it by written notice to the other party given in accordance with this Section.

#### **SECTION 6**

This Agreement shall be construed and interpreted under the laws of the State of Wisconsin and applicable provisions of federal law.

#### **SECTION 7**

By their signatures below, WMSN, on the one hand, and TV-49 and Channel 41 and 63, on the other hand, each warrant to the other that they have the requisite legal authorization and power to enter into this Agreement and that this Agreement constitutes a valid and binding obligation of each to the other enforceable in accordance with its terms. Each further warrants that the execution, delivery and performance of this Agreement does not violate or conflict with any provision of their charter documents, by-laws or provisions of any other contract or agreement to which they are a party or by which they may be bound and that, except for any necessary consents of the Federal Communications Commission, each is not under any injunction, statute, regulation, rule, judgment, decree or similar order which restricts their authority to enter into this Agreement and perform it in accordance with its terms.

#### **SECTION 8**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed signature pages of this agreement exchanged between the parties by facsimile or PDF electronic file copy shall be deemed original signature pages for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WMSN LICENSE, LLC

By: David R. Bochenek  
David R. Bochenek, VP/CAO  
Vice President, Engineering Operations  
Sinclair Broadcast Group, Inc.  
Sole Member of WMSN License, LLC

TV-49, INC. and CHANNEL 41 AND 63 LIMITED PARTNERSHIP

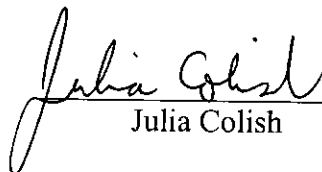
By: Norman H. Shapiro  
Norman H. Shapiro  
President of TV-49, Inc.  
President of General Partner of Channel 41 and 63 Limited Partnership

**CERTIFICATE OF SERVICE**

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that a copy of the foregoing "Supplement to Petition for Rulemaking" was served via hand delivery on this 5th day of August, 2008 to the following:

Ms. Barbara A. Kreisman  
Chief, Video Services Division  
Media Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 2-A666  
Washington, D.C. 20554

Mr. Clay Pendarvis  
Associate Division Chief, Video Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 2-A662  
Washington, D.C. 20554

  
Julia Colish